

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

BRIAN SMITH, <i>et al.</i> ,	§	
	§	
	§	Civil Action No. 9:15-CV-00061-RC
v.	§	
	§	
SELECT PORTFOLIO SERVICING, INC.,	§	
LONG BEACH MORTGAGE LOAN	§	
TRUST 2006-9, and CALIBER HOME	§	
LOANS, INC.	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE AND OF DISMISSAL**

The Court referred this matter to United States Magistrate Judge Keith F. Giblin for consideration and recommended disposition of case-dispositive pretrial motions. On January 31, 2017, Judge Giblin issued a Report and Recommendation (Doc. No. 43) in which he recommended that the Court grant the defendants' motion to dismiss and dismiss the plaintiffs' claims in their entirety for lack of subject matter jurisdiction and failure to state a claim pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(1)&(6).

On February 10, 2017, the plaintiff Brian Smith submitted brief objections (Doc. No. 44) and attached 57 pages of documents, most of which include documentation or correspondence related to the mortgage transaction for Mr. Smith's mother's and stepfather's residence made the basis of this suit. Mr. Smith also submitted a separate packet of documents (Doc No. 45) entitled "Damages" which outlines the categories of damages claimed by the plaintiffs and attaches over fifty (50) pages of his mother's medical records.

These filings do not discuss how the plaintiffs contend the magistrate judge specifically erred in recommending dismissal. *See* 28 U.S.C. § 636(b)(1); *Nettles v. Wainwright*, 677 F.2d

404, 410 n.8 (5th Cir. 1982)(en banc)(“Parties filing objections must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court.”) They merely reassert, through different disjointed handwritten statements, contentions already presented to the Court in previous filings. The same general allegations were before Judge Giblin when he made his findings and recommendation. Nothing in the plaintiffs’ recent submissions addresses the magistrate judge’s detailed findings and legal conclusions regarding the plaintiffs’ lack of standing to bring suit and the clear pleading deficiencies presented by the plaintiffs’ live complaint.

Accordingly, having considered the report of the magistrate judge, the plaintiffs’ objections and “damages response”, and having conducted a *de novo* review pursuant to 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. It is therefore **ORDERED** that the report and recommendation of the magistrate judge (Doc. No. 43) is **ADOPTED**. The defendants’ motion to dismiss (Doc. No. 25) is **GRANTED**. The claims asserted by the plaintiffs in this case are **DISMISSED** in their entirety, with prejudice, for lack of subject matter jurisdiction and failure to state a claim pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(1)&(6).

The Clerk is directed to **CLOSE** this case. This constitutes a final judgment for appeal purposes.

**So Ordered and Signed**

Feb 18, 2017



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Ron Clark, United States District Judge